

THIS AGREEMENT made this day of November, 2017.

THE CORPORATION OF THE TOWN OF ST. MARYS

(Hereinafter called the “Town”)

OF THE FIRST PART

AND:

2416987 ONTARIO INC.

(Hereinafter called the “Developer”)

OF THE SECOND PART

WHEREAS the Developer is the owner of certain Lands within the Town of St. Marys;

AND WHEREAS the Developer and the Town have entered into a Subdivision Agreement respecting the development and subdivision of the Lands by the Developer;

AND WHEREAS the Developer is responsible for the repair and maintenance of all Roads within and adjoining the Lands until a Certificate of Final Acceptance for the Works has been issued by the Town, including winter road maintenance;

AND WHEREAS pursuant to the Subdivision Agreement, the Developer and the Town may enter into a separate agreement respecting the winter road maintenance on the Lands;

AND WHEREAS the Developer and the Town have agreed to certain matters hereinafter expressed relating to the provision of winter road maintenance on the Lands;

NOW THEREFORE WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada paid by the Developer to the Town, the receipt whereof is hereby acknowledged, and of other good and valuable consideration, the parties hereto covenant, promise and agree as follows:

I – INTERPRETATION

1. The Developer and the Town agree that the above recitals are true.
2. In this Agreement the terms defined in this section shall have the following meanings unless the context expressly or by necessary implication otherwise requires:
 - a. “**Agreement**” means this Agreement and the Schedules attached hereto;
 - b. “**Lands**” means the lands described in Schedule “A” to this Agreement
 - c. “**Roads**” means all roads constructed and shown as such on the Plan of Subdivision within and adjoining the Lands;
 - d. “**Sidewalk**” means any and all sidewalks constructed appurtenant to the Roads, once the construction of such sidewalks is complete;
 - e. “**Subdivision Agreement**” means the Subdivision Agreement between the Developer and the Town dated July 23, 2016.

- f. **“Winter Maintenance”** means the maintenance activities normally performed following a Winter Maintenance Event to address snow accumulation and/or ice formation, and may include plowing, sanding, salting, and other services involved in assuring access and safety of vehicular traffic on the Roads.
- g. **“Winter Maintenance Event”** means a winter weather event which results in snow accumulation and/or ice formation on the Roads, such that the Roads require maintenance in order to meet the applicable maintenance standards.
- h. **“Winter Maintenance Period”** means the period between October 1 in a given year and April 30 in the following year.

II – SUBDIVISION AGREEMENT

- 3. The Developer and the Town entered into a Subdivision Agreement with respect to the Lands dated July 23, 2016, which Subdivision Agreement remains in effect.
- 4. The Developer and the Town agree that this Agreement is further to and does not alter, remove or supersede any provision of the Subdivision Agreement.

III – TERM AND TERMINATION

- 5. This Agreement shall come into force and take effect on the date it is signed by both parties.
- 6. The Term of this Agreement shall begin on the day it comes into force and shall continue until the end of the first whole or partial Winter Maintenance Period occurring after the Agreement is signed, unless terminated earlier as provided for under paragraph 8 of this Agreement.
- 7. At the end of the Term of the Agreement, the Agreement shall automatically be extended for additional terms of one year each, until and unless it is terminated as provided for under paragraph 8 of this Agreement.
- 8. This Agreement shall terminate:
 - a. Thirty (30) days after either party provides written notice of termination to the other party;
 - b. Immediately, if the Developer breaches its obligations to repair and maintain the Roads and the Town provides written notice of termination to the Developer, or,
 - c. Immediately, when the Town provides a Certificate of Final Acceptance of Works to the Developer in accordance with the Subdivision Agreement.

IV – WINTER MAINTENANCE

- 9. During the term of this Agreement, including any renewals thereof, the Town shall perform Winter Maintenance on the Roads and the Sidewalks after every Winter Maintenance Event occurring during a Winter Maintenance Period.
- 10. The Winter Maintenance for Roads shall comply with the Town’s standards, the Minimum Maintenance Standards for Municipal Highways, Ontario Regulation 239/02 made under the *Municipal Act, 2001*, S.O. 2001, c.25, and all other minimum standards required by law.
- 11. The Winter Maintenance for Sidewalks shall comply with the Town’s standards and all other minimum standards required by law.
- 12. The Town shall be solely responsible for determining when a Winter Maintenance Event has taken place based on the Town’s own practices and procedures.

13. The Developer acknowledges that:

- a. the Town's obligations with respect to repair and maintenance of the Roads is limited to providing the Winter Maintenance as described in paragraphs 9 through 12 above, and that the Town shall not be responsible for any other repairs or maintenance of the Roads; and,
- b. the Developer is solely responsible for all other road repair and maintenance in accordance with the terms of the Subdivision Agreement;

until such time as the Town has provided a Certificate of Final Acceptance of Works in accordance with the Subdivision Agreement.

14. The Developer acknowledges that the Roads have not been accepted by the Town. Neither this Agreement nor any work done on the Lands pursuant hereto shall be taken to constitute acceptance of the Roads.

15. The Town and its employees and agents may enter the Lands at any time to perform any work necessary to meet the Town's obligations under this Agreement.

16. The Town and its employees and agents may remove any object or obstacle from the Roads that interferes with the Town's ability to perform Winter Maintenance.

17. The Developer agrees to maintain the Roads in a state of good repair such that the Winter Maintenance can be effectively performed and to use best efforts to keep the Roads free from obstacles or obstructions which could interfere with the Winter Maintenance.

V – COST RECOVERY

18. The Developer shall pay the Town for the services it provides under this Agreement on a fee per Winter Maintenance Event basis.

19. The Town shall invoice the Developer for the services it provides hereunder twice during the Winter Maintenance Period, once at the end of the calendar year, and once at the end of the Winter Maintenance Period and the Developer shall pay every such invoice within thirty (30) days of the invoice date.

20. For the 2017-2018 Winter Maintenance Period, the maintenance fee per Winter Maintenance Event shall be \$147.57.

21. For every subsequent term of this Agreement, the road maintenance fee per Winter Maintenance Event shall be calculated as the average cost to the Town per kilometer of road in the Town per Winter Maintenance Event in the previous winter, multiplied by the length of the Roads and Sidewalks in kilometers.

22. If the Developer fails to pay any invoice under this Agreement by the date the payment becomes due, then the Town may deduct the amount owed to the Town from any security held by the Town pursuant to the Subdivision Agreement.

23. The Town shall provide the Developer with written notice of every deduction from a security held by the Town made in accordance with paragraph 23 of this Agreement, and upon receipt of such notice, the Developer shall forthwith furnish to the Town sufficient funds to restore the security deposit to the level required by the Town, up to a maximum of the total amount of security required under the Subdivision Agreement.

VI – LIABILITY

24. The Developer, on behalf of itself, its heirs, executors, administrators and assigns, including its successors in title, covenants and agrees to indemnify and save harmless the Town, its councillors, employees, officers, directors, agents and representatives, from all actions, causes of action, suits, claims or demands whatsoever related to the maintenance

and use of the Roads by any persons entering thereon for any purpose at any time during the term of this Agreement, including any renewals thereof.

25. The Developer, on behalf of itself, its heirs, executors, administrators and assigns, including its successors in title, covenants and agrees to indemnify and save harmless the Town, its councillors, employees, officers, directors, agents and representatives, from all actions, causes of action, suits, claims or demands whatsoever related to the maintenance and use of the Roads by the Developer, its contractor, sub-contractor, agent, architect, landscape architect, engineer, surveyor, planner, consultant, project manager, employee, customer and any other person or business related directly or indirectly to the Developer that may carry out works and/or use the Roads for any purpose during the term of this Agreement, including any renewals thereof.
26. The indemnity referred to in paragraphs 25-26 of this Agreement includes but is not limited to the actions, performance, negligence or non-performance of the Developer, its contractor, sub-contractor, agent, architect, landscape architect, engineer, surveyor, planner, consultant, project manager, employee, customer, and anyone else using the Roads for any purpose.
27. Notwithstanding the indemnity referred to in paragraphs 24-26 of this Agreement, the Town may be held responsible to the extent and in proportion to any negligence of the Town in performing the Winter Maintenance.
28. The Developer, on behalf of itself, its heirs, executors, administrators and assigns, including its successors in title, covenants and agrees to indemnify and save harmless the Town from all actions, causes of action, suits, claims or demands whatsoever related to damage or interference caused to the Lands or to any improvements, fixtures, equipment or structures thereon by the Town, its employees or its agents in the performance of this Agreement, and the Developer waives any and all such claims on behalf of itself, its heirs, executors, administrators and assigns, including its successors in title.

VII – GENERAL

29. No variation, amendment or addition of or to this Agreement shall be effective unless it is made in writing and is signed by both the Developer and the Town.
30. Any notice required to be given or document required to be delivered herein shall be delivered to the party to whom the notice or document is to be given as set out in paragraph 12.7 of the Subdivision Agreement, and such notice shall become effective at the time and in the manner stated in same.
31. This Agreement shall not be assigned by either party without the prior written consent of the other party.
32. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
33. Schedule “A”, attached hereto, is hereby incorporated into and forms part of this Agreement.

IN WITNESS WHEREOF, on the [DATE] day of November, 2017 the Parties have hereunto set their hands and seals or caused to be affixed their corporate seals under the hands of the duly authorized officers as the case may be.

**THE CORPORATION OF THE TOWN
OF ST. MARYS**

Al Strathdee, Mayor

Brent Kittmer, CAO

We have the authority to bind the Corporation.

COMPANY NAME

I/We have the authority to bind the Corporation and the Partnership.

SCHEDULE “A” – LEGAL DESCRIPTION OF LANDS

[INSERT]